

Daniel Clark, from August 19, 2010 through October 14, 2010, at the specific instance and request of Daniel Clark and his parents, Wendy and Robert Hallmark, and after allowing all reasonable credits, the bill for said services and goods is in the amount of Three Hundred Ninety-Six Thousand Four Hundred Fifty-Nine and 12/100 Dollars (\$396,459.12), plus interest and costs which amount remains past due and unpaid after demand for payment has been made and payment refused.

5. That Daniel Clark was a plan participant/beneficiary of Genesis Plan as son of plan participant, Robert Hallmark at the time The Med rendered the aforementioned medical services.

6. That Wendy Hallmark and Robert Hallmark assigned The Med the all contractual rights they held with Genesis and Genesis Plan; and further, that The Med asserts this cause of action as a third-party beneficiary of the medical plan between Genesis and Genesis Plan and Robert Hallmark and/or Daniel Clark.

7. That Genesis Plan was and is the health insurance carrier for Daniel Clark, and that Genesis and Genesis Plan refused and failed to make payment after proper billing and demand by The Med.

8. That upon information and belief, Genesis terminated the ERISA plan to avoid honor and payment of Daniel Clark's medical bills.

9. That to the extent any entity has purchased the assets of Genesis subsequent to the provision of medical services, or that there has otherwise been a transfer of ownership of Genesis, the subsequent owners/entity is/are subject to liability under the Doctrine of Substantial Continuity.

10. That the aforementioned transactions and provisions of medical services took place in Memphis, Shelby County, Tennessee. Genesis maintained its plan in Union County, Mississippi.

11. That Plaintiff brings this action upon Sworn Affidavit being filed herewith and attached hereto as Plaintiff's Exhibit "A" and upon contracts and assignments of all benefits attached hereto collectively as Plaintiff's Exhibit "B".

12. That Genesis and Genesis Plan failed to make proper payment to The Med for the

aforementioned medical services rendered.

13. That Genesis and Genesis Plan did not comply with the health benefit plan provisions or contract of insurance, and therefore breached same, in their nonpayment of benefits.

14. That Genesis and Genesis Plan did not comply with federal law in their refusal to provide benefits or make payment.

15. That Genesis and Genesis Plan have not responded to The Med's request, pursuant to assignment, for a copy of the summary plan description, and other plan information that supported the non-payment of benefits.

16. That Genesis and Genesis Plan are obligated to supply such information pursuant to section 101(a) of ERISA, 29 U.S.C. 1021(a).

17. That Genesis and Genesis Plan pay the statutory penalty for failure to timely provide documents beyond the 30 days as allowed by section 502(c)(1) of ERISA, 20 U.S.C. 1132(c)(1).

18. That Genesis and Genesis Plan breached their fiduciary duty to Daniel Clark, and by assignment, The Med, and acted in bad faith in their actions and refusal to pay Daniel Clark's hospital bill at The Med, and are subject to liability under ERISA section 502(a)(2).

19. That Genesis and Genesis Plan pay Daniel Clark's outstanding hospital bill and all statutory penalties for its breach of fiduciary duties and bad faith.

20. That Genesis and Genesis Plan's nondisclosure, course of action and breach of duties warrant an award of Plaintiff's attorney fees as permitted pursuant to ERISA.

21. That this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367.

WHEREFORE, PLAINTIFF PRAYS:

22. That service of process issue upon Defendants requiring Defendants to answer, appear or otherwise plead to this Complaint.

23. For a judgment against Defendants, Genesis in the amount of Three Hundred Ninety-Six

Thousand Four Hundred Fifty-Nine and 12/100 Dollars (\$396,459.12), plus prejudgment interest and costs in this cause.

24. For a judgment against Defendant, Genesis Plan, in the amount of Three Hundred Ninety-Six Thousand Four Hundred Fifty-Nine and 12/100 Dollars (\$396,459.12), plus prejudgment interest and court costs in this cause.

25. For an award of the statutory penalty for each day in which such disclosure was delayed beyond the 30 days allowed by section 502(c)(1) of ERISA, 20 U.S.C. 1132(c)(1) against Defendants, Genesis and Genesis Plan.

26. For an award of attorney fees, prejudgment interest, and costs against Genesis and Genesis Plan as provided for under ERISA and federal law.

27. For such other, further and general relief to which The Med may be entitled.

s/Curtis H. Goetsch
CURTIS H. GOETSCH (MS 102429)
McCullough & McCullough, PLLC
Attorneys for The Med
9050 Corporate Gardens Drive
Germantown, Tennessee 38138
Phone: (901) 755-8881
mail@mcculloughfirm.com